

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Samuel Dawan Kirk,)	
)	C/A No.: 0:06-1036-MBS
Plaintiff,)	
)	
vs.)	
)	O R D E R
Officer Kirkland; Officer Kahl;)	
Officer Myers; Alvin S. Glenn Detention)	
Center,)	
)	
Defendants.)	
)	

At the time of the underlying complaint, Plaintiff Samuel Dawan Kirk was a pretrial detainee held at the Alvin S. Glenn Detention Center in Richland County, South Carolina. Plaintiff, appearing pro se, filed a complaint pursuant to 42 U.S.C. § 1983 on April 4, 2006, asserting that Defendants violated his constitutional rights.

This matter is before the court on Defendants' motion for summary judgment filed August 21, 2006. Defendants contend, among other things, that Plaintiff has failed to exhaust his administrative remedies as required by 42 U.S.C. § 1997e. On August 22, 2006, an order was issued pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), in which Plaintiff was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Plaintiff filed a response on September 27, 2006, to which Defendants filed a reply on October 4, 2006.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pretrial handling. On November 14, 2006, the Magistrate Judge filed a Report and Recommendation in which he recommended that Defendants' motion for summary judgment be granted and that the case be dismissed without

prejudice because Plaintiff has failed to exhaust his administrative remedies. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has thoroughly reviewed the record. The court concurs in the recommendation of the Magistrate Judge. Defendants' motion for summary judgment is **granted**. The within action is dismissed without prejudice for failure of Plaintiff to exhaust his administrative remedies as required by 42 U.S.C. § 1997e.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

December 18, 2006

Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.